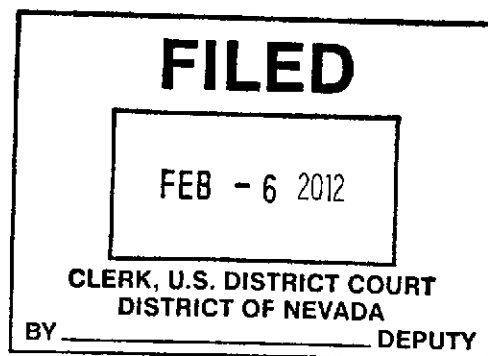


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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 **-oOo-**

9
10 UNITED STATES OF AMERICA,)

11 Plaintiff,)

12 vs.)

13 BRETT I. DEPUE,)

14 Defendant.)
15

2:10-cr-0121-RLH-RJJ

GOVERNMENT'S TRIAL MEMORANDUM

16 The United States of America, by and through Daniel G. Bogden, United States
17 Attorney, and Brian Pugh and Sarah Griswold, Assistant United States Attorneys, files its trial
18 memorandum as follows.

19 **I. STATEMENT OF THE CASE**

20 From on or about February 1, 2005, to on or about May 31, 2007, defendant conducted a
21 conspiracy and scheme to defraud financial institutions by recruiting straw buyers to buy real
22 estate and using false and fraudulent representations to lenders to obtain mortgage loans to finance
23 the straw buyers' real estate purchases. In doing so, defendant caused money proceeds from the
24 loan transactions to be disbursed to him or his companies.

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II. FACTS

Defendant is charged by criminal indictment with one count of conspiracy to commit mail, wire and bank fraud in violation of Title 18, United States Code, Section 1349, and eleven counts of wire fraud in violation of Title 18, United States Code, Section 1343.

From on or about February 1, 2005, to on or about May 31, 2007, defendant participated in a conspiracy with others charged and uncharged, including but not limited to the following individuals:

Coconspirator	Role in the conspiracy	Charged or uncharged
Jared Arambel	Loan officer	serving 30 months in prison
Brian Barney	Second in command behind defendant and flipper	Charged/awaiting sentencing
Sam Cardoso	Created business entities, verified false employment, and straw	Charged/awaiting sentencing
Cassidy Cotten	Accountant and verified false employment	Charged/awaiting sentencing
Jenna Depue	Office manager, flipper, property finder	Charged/awaiting sentencing
Jared Estes	Property finder and office worker	Uncharged
Brett Gibbs	Recruiter and loan officer	Served one year in prison
Angelica Kimber	Processor of fraudulent documents	Charged/awaiting sentencing
Jeff Lonsdale	Recruiter, flipper, and property finder	Charged/awaiting sentencing
Paula Martin	Property finder and office manager	Uncharged
Anita Mathur	Partner to defendant	Charged/awaiting sentencing
Maria Ornelas	Office manager	Charged/awaiting sentencing
Maria Testa	Property finder and office worker	Uncharged

The conspiracy consisted of recruiting straw buyers to purchase real estate which defendant would control. Defendant leased the properties and applied the leases toward mortgage payments. The mortgage payments substantially exceeded the lease receipts. Defendant

1 orchestrated these transactions for the purpose of receiving cash at the closing of the transactions.
2 Defendant obtained cash through the use of cash disbursements at the close of escrow to one of his
3 business entities or through the use of double escrows.

4 Double escrows

5 Defendant's scheme evolved over time. Defendant orchestrated simple straw buyer
6 transactions wherein defendant used straw buyers to purchase properties using 100 percent
7 financing. The properties would be purchased by the straw buyers at a price above the asking price
8 and the difference was disbursed at closing to one of defendant's entities.

9 It was more common for defendant to use double escrows. In defendant's scheme, a
10 double escrow is a transaction in which buyer buys a property and soon thereafter resells it to a
11 straw buyer at an inflated price. Often, both sales would occur on the same day. These
12 transactions are also referred to as a property flip. Hereinafter, the buyer who buys and
13 immediately sells the property will be referred to as the "flipper."

14 Originally, defendant used hard money lenders to fund his double escrows. Defendant
15 arranged for a hard money lender to provide the money for the flipper to "pay cash" to buy a
16 property at or below asking price. At the same time, defendant arranged for a straw buyer to buy
17 the property from the flipper at an inflated price. The straw buyer's purchase was financed.
18 Materially false information regarding the straw buyer's qualifications were used to obtain a
19 mortgage loan to finance the straw purchase. The inflated price created seller proceeds to the
20 flipper which the flipper would give to defendant. When the transaction closed, a disbursement
21 from escrow would pay off the hard money lender.

22 Later, defendant learned of a double escrow method that eliminated the need for a hard
23 money loan. The property was still purchased at or below asking price and sold to a straw buyer at
24 an inflated price. However, instead of using a hard money loan as the source of the flipper's cash
25 to purchase, the straw buyer's mortgage loan became the "cash" the flipper used to buy the property
26 from the seller. In order for these double escrow to work, the first and second transactions had to

1 be conducted at the same time so the flipper had funds to pay for the property. Again, materially
2 false information regarding the straw buyer's qualifications were used to obtain a mortgage loan to
3 finance the straw purchase.

4 Recruiting straw buyers

5 Defendant and his coconspirators targeted individuals with high credit scores who would
6 qualify for one hundred percent (100%) or near 100% financing for the acquisition of real estate.
7 The straw buyers were often friends and family of defendant or his coconspirators. In most
8 instances, to obtain 100% financing, straw buyers had to purchase the properties as owner-
9 occupied residences. None of the straw buyers intended to occupy the residences they purchased
10 for defendant.

11 Defendant described the "investment opportunity" to the straw buyers as follows:

- 12 1. Defendant would pay the investor for each house the investor purchased, usually
13 \$5,000.
- 14 2. Investors did not have to provide any money for the transaction. All the investors
15 had to provide was their name and credit. All mortgage payments, costs, fees and
16 maintenance would be paid by Defendant.
- 17 3. Participating in the transaction would improve the straw buyer's credit.
- 18 4. The straw buyer would buy up to five properties.
- 19 5. Defendant would put renters in the properties.
- 20 6. The properties would be held for a period of time after which they could be sold
21 for a profit.

22 Fraudulent loan applications

23 Defendant caused coconspirator Angelica Kimber and others to prepare loan applications
24 and supporting documentation in the investors' names to submit to financial institutions to obtain
25 mortgage loan financing to fund the real estate straw purchases. The loan applications and
26 supporting documentation contained materially false and fraudulent information to qualify the

1 investors for mortgage loans. The false and fraudulent information included, but was not limited
2 to, the following:

- 3 1. The true identity of the buyer/borrower – Defendant was the true buyer of the
4 properties. Defendant controlled the properties shortly after closing by having the
5 properties rented and managed by his employees or by a property management
6 company. For a period of time, before allowing the homes to go into default,
7 defendant made the mortgage payments. The very purpose for which an
8 individual applies for a loan is for the bank to determine that individual's credit
9 worthiness. The fact that the borrower named on the loan application was not the
10 person who was going to make the mortgage payments is material to a lender's
11 decision whether to lend.
- 12 2. Employer and position – Defendant misrepresented the straw buyer's employer
13 and position when their true information was insufficient to qualify them for a
14 mortgage loan. Often, defendant used one of his shell companies, such as
15 Weichey Orothodontic, as a false employer and listed the borrower's position as
16 an executive position. In all but a few instances, the straw buyer did not work for
17 the listed employer. This false information was frequently falsely verified by
18 "CPA letters" or "accountant letters" included in the loan packages sent to
19 lenders. Defendant had an accountant, Cassidy Cotten, who provided letters on
20 his company letterhead that falsely stated that the borrower had been self-
21 employed for a number of years. Lenders also expect borrowers to be employed
22 for a certain number of years in their current position to show stability.
- 23 3. Income – In order to qualify for most mortgage loans, borrowers need to have
24 sufficient income for the lenders to conclude that they would be able to afford
25 their monthly mortgage payments. In these instances, defendant caused to be
26 misrepresented the investors' income to qualify them for loans for which they

would not have qualified without the misrepresentation.

4. Assets – Some lenders require borrowers to have bank accounts sufficiently large for the borrowers to qualify for the loan. In such instances, defendant artificially inflated the borrowers' asset information. Defendant used the following methods:
 - a. Defendant deposited money into investors' bank accounts.
 - b. Defendant added investors to his existing bank accounts. This was ordinarily done when lenders required the borrower to have bank accounts with balances sufficiently large account over a period of time.
 - c. Defendant caused documents to be forged that falsely verified misrepresentations regarding the borrower's assets. The most commonly used forgery was of a Wells Fargo Bank statement
5. Intent to occupy the property as a primary residence – During the period of time that defendant orchestrated his mortgage fraud scheme, a buyer of a primary residence could obtain 100% financing of their home purchase if their credit score was sufficiently high. For this reason, defendant recruited straw buyers with sufficiently high credit scores to qualify for 100% financing loans. This limited the amount of money defendant had to use to initiate the transactions. Straw buyers in every instance had no intent to occupy the properties purchased in their names. Regardless, defendant caused most of the straw buyers' loans to be submitted as owner-occupied. Defendant did this regardless of how many homes were being purchased in the investors' names. It was common for investors to simultaneously purchase five homes all as owner-occupied.

III. EVIDENTIARY AND DISCOVERY ISSUES

A. Evidentiary Issues.

The Government anticipates the following evidentiary issue:

The Government intends to offer statements made by coconspirators during and in

1 furtherance of the conspiracy. The Government is prepared to argue that such statements satisfy
2 the co-conspirator exception to the hearsay rule.

3 B. Discovery Issues

4 The Government anticipates no discovery issues. The Government has disclosed all
5 Jencks, Brady and Giglio material and observed its continuing discovery obligation by disclosing
6 all documents in its possession.

7 **IV. EXHIBIT LIST AND WITNESS LIST**

8 The exhibit list and witness list will be provided to defense counsel at calendar call.

9 **V. CERTIFICATE OF READINESS FOR TRIAL**

10 The undersigned hereby certifies that he is trial counsel for the United States herein; that
11 subpoenas have been issued for all non-Government employees who will testify herein; and that
12 the matter is ready for trial on the date set.

13 DATED this 1st day of February 2012.


14 Respectfully submitted,

15 DANIEL G. BOGDEN
16 United States Attorney

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18 BRIAN PUGH
19 SARAH E. GRISWOLD
20 Assistant United States Attorneys
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1 This is to certify that the foregoing Government's Trial Memorandum will be personally
2 served upon defense counsel prior to commencement of trial.

3 DATED this 1st day of February 2012.

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6 
7 BRIAN PUGH
8 Assistant United States Attorney
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